

**City of Augusta, Maine**  
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT  
CODE ENFORCEMENT  
ECONOMIC DEVELOPMENT




ENGINEERING  
FACILITIES & SYSTEMS  
PLANNING

**Findings of Fact, Conclusions of Law, and Certificate of Approval**  
**June 3, 2015**

**Variance Granted.**

**FINDINGS OF FACT**

1. **Owner:** Louise Rollins
2. **Applicant:** Louise Rollins
3. **Location:** 21 Brooklawn Ave, with frontage on Manley Street as well
4. **Registry:** Book 3613, Page 121
5. **Zoning:** Residential A (RA)
6. **Tax Map Number:** Map 26, Lots 42 and 46
7. **Existing Land Use:** Parcel currently has a single family residence on it.
8. **Proposed Land Use:** Applicant proposes to split the parcel into its two prior component parcels that were combined due to being in identical ownership, with only one lot developed, and neither meeting the dimensional standards of the Zoning Ordinance, per the 1983 Zoning Ordinance.
9. **Acreage:** 0.34 acres for the combined parcels
10. The following material was date stamped by the Department of Development Services on Wednesday, May, 13, 2015:
  - a. A completed Application for Variance or Appeal form to Board of Zoning Appeals filled out by James Coffin of E.S. Coffin Engineering & Surveying, Inc, identifying Louise Rollins as the applicants.
  - b. A plan entitled "Proposed Conveyance by Louise L. Rollins", dated May 2015.
  - c. A check for \$100 to cover the cost of the application fee.
11. City Staff provided the following:
  - a. A detailed memo on May 28, 2015, analyzing the proposal relative to the zoning district and the variance criteria.

 CHAIR INITIALS

12. A Notice of Public Hearing was authorized by Peter Fortunato, the Acting Chair Augusta Board of Zoning Appeals.
13. A Notice of Public Hearing was advertised in the Kennebec Journal on May 23, 2015.
14. A copy of the Notice of Public hearing was mailed via First Class mail to all property owners with property within 500 feet of the boundary of the subject parcels.
15. The Board of Zoning Appeals held a public hearing regarding the application on June 3, 2015. At that meeting Matthew Nazar, Deputy Director of Development Services, and Robert Overton, Code Enforcement Officer, provided a detailed review of the proposal as submitted and how it is affected by the Land Use Ordinance. The review included an analysis of the variance criteria relative to the request and the standards of the Residential A (RA) Zoning District.
16. Three individuals testified, besides the applicant/applicant's agent, at the June 3, 2015, public hearing.

#### **CONCLUSIONS OF LAW:**

1. The facts are:
  - a. The applicant requests a variance to be allowed to erect a residential home on a parcel of land shown on the City Tax Maps as Map 26, Lot 42.
  - b. Tax Map 26, Lot 42, and Tax Map 26, Lot 46 were purchased via a single transaction on June 8, 1972, by Clayton E. Rollins and Louise L. Rollins. The two tax lots are described as two parcels on the same deed (Kennebec County Registry of Deeds Book 1585, Page 488). The two lots/parcels were in common ownership.
  - c. Tax Map 26, Lot 46 has a single family residence on it. Tax Map 26, Lot 42 is vacant.
  - d. Tax Map 26, Lot 46, has 96 feet of frontage on Brooklawn Avenue, 74 feet of depth, and 7,104 square feet of area. Tax Map 26, Lot 42, has 63 feet of frontage on Manley Street, 120 feet of depth, and 7,560 square feet of area.
  - e. The City of Augusta Zoning Ordinance, effective November 9, 1983, placed both of these parcels into the Residential A zoning district with dimensional requires as follows: minimum lot area 10,000 square feet, minimum lot frontage 100 feet, minimum lot depth 100 feet. The zoning and dimensional standards remain the same in the ordinance in effect on June 3, 2015.
  - f. Separately, both parcels became non-conforming lots on November 9, 1983, due to their failure to meet dimensional standards within the ordinance.

g. Section I(F)(j) of the November 9, 1983, zoning ordinances states:

“Contiguous Lots in Continuous Ownership: If two or more lots are in single ownership of record at the time of adoption of this ordinance, and if all or part of the lots do not meet the dimensional requirements of this ordinance, the lands involved shall be considered to be a single parcel, and no portion of said parcel shall be built upon or sold which does not meet the dimensional requirements of this ordinance; nor shall any division of the parcel be made which creates any dimension or area below these dimensional requirements.”

h. The Augusta Land Use Ordinance in effect on June 3, 2015, contains a functionally equivalent provision in Section 3.5.8.2.

i. As such, the parcels are legally combined.

j. The applicant’s variance request would allow the applicant to re-divide the parcel into its two pre-November 9, 1983, configuration, and allow both parcels to be buildable. This configuration would be a 4’ frontage, 26’ depth, and 2,896 square foot lot size variance for Tax Map 26, Lot 46, and a 37’ frontage, and 2,440 square foot lot size variance for Tax Map 26, Lot 42, based on the dimensions provided, with the intent being that the parcels revert to their pre-November 9, 1983, configuration.

2. The Board of Zoning Appeals has reviewed the applicant and the criteria for a variance in the Augusta Land Use Ordinance and concludes the following:

a. Standing: Does the applicant and the applicant’s agent have the legal standing to bring the application to the Board for approval?

The applicant is the owner of the parcel in question and therefore has standing to request this variance.

b. Variance Criteria 1: Section 6.6.2.2.1.a of the Land Use Ordinance states that the applicant must demonstrate to the Board:

“That well documented, exceptional conditions affect the particular land or building which do not generally affect other properties in the district.”

Based on the evidence submitted, the Board concludes that the parcel does have exceptional conditions that affect primarily this parcel and only some other parcels in the district. Some parcels in the district were affected by this section of the ordinance, but most lots in this district were developed as independent lots.

c. Variance Criteria 2: Section 6.6.2.2.1.b.i of the Land Use Ordinance is related to “undue hardship” criteria and states that the applicant must demonstrate to the Board:

“That the land in question cannot yield a reasonable return unless a variance is granted.”

Based on the evidence submitted, the Board concludes that the vacant parcel (Tax Map 26, Lot 42), still shown on the tax maps as a separate parcel despite the assessor’s notes that it is assessed in combination with the developed parcel (Tax Map 26, Lot 46), cannot yield a reasonable return under its current use.

- d. Variance Criteria 3: Section 6.6.2.2.1.b.ii of the Land Use Ordinance is related to “undue hardship” criteria and states that the applicant must demonstrate to the Board:

“That the need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood.”

Based on the evidence submitted, the Board concludes that the parcel does have exceptional conditions that affect primarily this parcel and only some other parcels in the district. Some parcels in the district were affected by this section of the ordinance, but most lots in this district were developed as independent lots.

- e. Variance Criteria 4: Section 6.6.2.2.1.b.iii of the Land Use Ordinance is related to “undue hardship” criteria and states that the applicant must demonstrate to the Board:

“The granting of a variance will not alter the essential character of the locality.”

Based on the evidence submitted, the Board concludes, that the variance would create a second buildable lot similar in size to other lots in the area.

- f. Variance Criteria 5: Section 6.6.2.2.1.b.iv of the Land Use Ordinance is related to “undue hardship” criteria and states that the applicant must demonstrate to the Board:

“That the hardship is not the result of action taken by the applicant or prior owner.”

Based on the evidence submitted, the Board concludes that there was no action taken by the applicant or a prior owner to create non-conforming lots.

- g. Variance Criteria 6: Section 6.6.2.2.1.c of the Land Use Ordinance states that the applicant must demonstrate to the Board:

“That a variance from the particular terms of this ordinance can be granted without detriment to the public interest or the health, safety, or general welfare of the residents of the municipality, and without impairment of the integrity of the comprehensive plan for municipal development, or of the purpose and intent of the ordinance.”

Based on the evidence submitted, the Board concludes that the lot in its pre-November 9, 1983, configuration, with construction of a residence allowed, is similar to other parcels in the neighborhood and would therefore not be a detriment to the health, safety, or general welfare of the public.

h. Variance Criteria 7: Section 6.6.2.2.2 of the Land Use Ordinance states that:

“Limit on variances. No variance shall be granted for placement of a structure less than five (5) feet from the property line unless the abutting owner gives a construction, maintenance and repair easement which shall be recorded with the Kennebec County Registry of Deeds. No variance shall be granted which does not provide for a snow storage area of a minimum of five (5) feet from the right-of-way line. In shoreland areas, the minimum setback from the normal high water mark for subsurface sewage disposal facilities shall not be reduced by variance.”

Based on the evidence submitted, the Board concludes that the applicant has met this variance criterion.

i. Variance Criteria 8: Section 6.6.2.5 of the Land Use Ordinance states that:

“In granting appeals, the board may impose such conditions and safeguards regarding the location, character, fencing, screening, landscaping, or other features as it may deem advisable in furtherance of the intent and purpose of this ordinance, and may require posting of bonds to assure performance. The issuance of any variance shall be contingent upon the applicant's agreeing in writing to indemnify and save harmless the city against all loss, cost, damage or expense occurring by reason of the erection or maintenance of a structure and upon his or her filing with the City Clerk a certificate of public liability insurance covering property damage up to one thousand dollars (\$1,000.00) and bodily damage with a coverage of ten thousand to twenty thousand dollars (\$10,000.00 to \$20,000.00) minimum limits.”

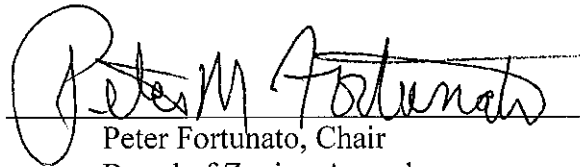
Based on the evidence submitted, the Board concludes that the applicant has met this variance criterion.

**CONDITIONS OF FINAL APPROVAL**

The following conditions shall be met:

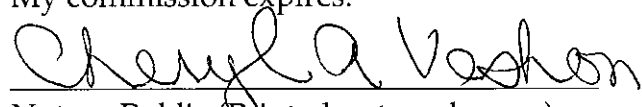
**1. NONE.**

IN WITNESS WHEREOF, I have hereto set my hand and seal this 10 day of July, 2015.

  
Peter Fortunato, Chair  
Board of Zoning Appeals

STATE OF MAINE  
KENNEBEC, SS

Then personally appeared the above named Peter Fortunato and acknowledged the above certificate to be his free act and deed in his capacity as Chair of the Augusta Board of Zoning Appeals.

**CHERYL A. VASHON**  
Notary Public, Maine  
~~My Commission Expires May 5, 2016~~  
My commission expires:  
  
Notary Public (Printed or typed name)

This certificate must be recorded in the Kennebec County Registry of Deeds within 90 days of the date of the final written approval of the variance for the variance to be valid pursuant to 30-A M.R.S.A. 4353(3).